

1 A bill to be entitled
2 An act relating to covenants and restrictions;
3 amending ss. 125.022 and 166.033, F.S.; deleting
4 provisions specifying that a county or municipality is
5 not prohibited from providing information to an
6 applicant regarding other state or federal permits
7 that may apply under certain circumstances; specifying
8 that the imposition or acceptance of certain
9 restrictions or covenants does not preclude a county
10 or municipality from exercising its police power, in
11 its sole discretion, to later amend, release, or
12 terminate such restrictions or covenants; prohibiting
13 a county or municipality from delegating its police
14 power to a third party by restriction, covenant, or
15 otherwise; declaring any such purported delegation
16 void; providing for retroactive applicability;
17 creating s. 712.001, F.S.; providing a short title;
18 amending s. 712.01, F.S.; defining and redefining
19 terms; amending s. 712.04, F.S.; providing that a
20 marketable title is free and clear of all covenants or
21 restrictions, the existence of which depends upon any
22 act, title transaction, event, zoning requirement,
23 building or development permit, or omission that
24 occurred before the effective date of the root of
25 title; providing for construction; providing

26 applicability; amending s. 712.05, F.S.; revising the
 27 notice filing requirements for a person claiming an
 28 interest in land and other rights; authorizing a
 29 property owners' association to preserve and protect
 30 certain covenants or restrictions from extinguishment,
 31 subject to specified requirements; providing that a
 32 failure in indexing does not affect the validity of
 33 the notice; extending the length of time certain
 34 covenants or restrictions are preserved; deleting a
 35 provision requiring a two-thirds vote by members of an
 36 incorporated homeowners' association to file certain
 37 notices; conforming provisions to changes made by the
 38 act; amending s. 712.06, F.S.; exempting a specified
 39 summary notice from certain notice content
 40 requirements; revising the contents required to be
 41 specified by certain notices; conforming provisions to
 42 changes made by the act; amending s. 712.11, F.S.;
 43 conforming provisions to changes made by the act;
 44 creating s. 712.12, F.S.; defining terms; authorizing
 45 the parcel owners of a community not subject to a
 46 homeowners' association to use specified procedures to
 47 revive certain covenants or restrictions, subject to
 48 certain exceptions and requirements; authorizing a
 49 parcel owner to commence an action by a specified date
 50 under certain circumstances for a judicial

51 determination that the covenants or restrictions did
 52 not govern that parcel as of a specified date and that
 53 any revitalization of such covenants or restrictions
 54 as to that parcel would unconstitutionally deprive the
 55 parcel owner of rights or property; providing
 56 applicability; amending s. 720.303, F.S.; requiring a
 57 board to take up certain provisions relating to notice
 58 filings at the first board meeting; creating s.
 59 720.3032, F.S.; providing recording requirements for
 60 an association; providing a document form for
 61 recording by an association to preserve certain
 62 covenants or restrictions; providing that failure to
 63 file one or more notices does not affect the validity
 64 or enforceability of a covenant or restriction or
 65 alter the time before extinguishment under certain
 66 circumstances; requiring a copy of the filed notice to
 67 be sent to all members; requiring the original signed
 68 notice to be recorded with the clerk of the circuit
 69 court or other recorder; amending ss. 702.09 and
 70 702.10, F.S.; conforming provisions to changes made by
 71 the act; amending s. 712.095, F.S.; conforming a
 72 cross-reference; amending ss. 720.403, 720.404,
 73 720.405, and 720.407, F.S.; conforming provisions to
 74 changes made by the act; providing an effective date.
 75

76 Be It Enacted by the Legislature of the State of Florida:

77

78 Section 1. Subsection (6) of section 125.022, Florida
79 Statutes, is amended to read:

80 125.022 Development permits.—

81 (6) The imposition or acceptance of a recorded or
82 unrecorded restriction or covenant in connection with the
83 approval or issuance of a development permit does not preclude
84 the county from exercising its police power, in its sole
85 discretion, to later amend, release, or terminate the
86 restriction or covenant. A county may not delegate its police
87 power to a third party by restriction, covenant, or otherwise,
88 and any such purported delegation is hereby declared to be void
89 ~~This section does not prohibit a county from providing~~
90 ~~information to an applicant regarding what other state or~~
91 ~~federal permits may apply.~~

92 Section 2. Subsection (6) of section 166.033, Florida
93 Statutes, is amended to read:

94 166.033 Development permits.—

95 (6) The imposition or acceptance of a recorded or
96 unrecorded restriction or covenant in connection with the
97 approval or issuance of a development permit does not preclude a
98 municipality from exercising its police power, in its sole
99 discretion, to later amend, release, or terminate the
100 restriction or covenant. A municipality may not delegate its

101 police power to a third party by restriction, covenant, or
 102 otherwise, and any such purported delegation is hereby declared
 103 to be void ~~This section does not prohibit a municipality from~~
 104 ~~providing information to an applicant regarding what other state~~
 105 ~~or federal permits may apply.~~

106 Section 3. The amendments by this act to ss. 125.022 and
 107 166.033, Florida Statutes, which relate to development permits,
 108 are remedial in nature and apply retroactively.

109 Section 4. Section 712.001, Florida Statutes, is created
 110 to read:

111 712.001 Short title.—This chapter may be cited as the
 112 "Marketable Record Title Act."

113 Section 5. Section 712.01, Florida Statutes, is reordered
 114 and amended to read:

115 712.01 Definitions.—As used in this chapter, the term law:

116 (1) "Community covenant or restriction" means any
 117 agreement or limitation contained in a document recorded in the
 118 public records of the county in which a parcel is located which:

119 (a) Subjects the parcel to any use restriction that may be
 120 enforced by a property owners' association; or

121 (b) Authorizes a property owners' association to impose a
 122 charge or assessment against the parcel or the parcel owner.

123 (4) ~~(1)~~ The term "Person" includes the as used herein
 124 ~~denotes~~ singular or plural, natural or corporate, private or
 125 governmental, including the state and any political subdivision

126 or agency thereof as the context for the use thereof requires or
 127 denotes and including any property owners' ~~homeowners'~~
 128 association.

129 ~~(6)-(2)~~ "Root of title" means any title transaction
 130 purporting to create or transfer the estate claimed by any
 131 person ~~and~~ which is the last title transaction to have been
 132 recorded at least 30 years before ~~prior to~~ the time when
 133 marketability is being determined. The effective date of the
 134 root of title is the date on which it was recorded.

135 ~~(7)-(3)~~ "Title transaction" means any recorded instrument
 136 or court proceeding that ~~which~~ affects title to any estate or
 137 interest in land and that ~~which~~ describes the land sufficiently
 138 to identify its location and boundaries.

139 ~~(5)-(4)~~ "Property owners' association" ~~The term~~
 140 ~~"homeowners' association"~~ means a homeowners' association as
 141 defined in s. 720.301, a corporation or other entity responsible
 142 for the operation of property in which the voting membership is
 143 made up of the owners of the property or their agents, or a
 144 combination thereof, and in which membership is a mandatory
 145 condition of property ownership, or an association of parcel
 146 owners which is authorized to enforce a community covenant or
 147 restriction ~~use restrictions~~ that is ~~are~~ imposed on the parcels.

148 ~~(3)-(5)~~ ~~The term~~ "Parcel" means real property that ~~which~~ is
 149 used for residential purposes and that is subject to exclusive
 150 ownership and ~~which is subject~~ to any covenant or restriction of

151 a property owners' ~~homeowners'~~ association.

152 ~~(2)(6) The term "Covenant or restriction" means any~~
 153 agreement or limitation contained in a document recorded in the
 154 public records of the county in which a parcel is located which
 155 subjects the parcel to any use or other restriction or
 156 obligation ~~which may be enforced by a homeowners' association or~~
 157 ~~which authorizes a homeowners' association to impose a charge or~~
 158 ~~assessment against the parcel or the owner of the parcel or~~
 159 ~~which may be enforced by the Florida Department of Environmental~~
 160 ~~Protection pursuant to chapter 376 or chapter 403.~~

161 Section 6. Section 712.04, Florida Statutes, is amended to
 162 read:

163 712.04 Interests extinguished by marketable record title.-

164 (1) Subject to s. 712.03, a marketable record title is
 165 free and clear of all estates, interests, claims, covenants,
 166 restrictions, or charges, the existence of which depends upon
 167 any act, title transaction, event, zoning requirement, building
 168 or development permit, or omission that occurred before the
 169 effective date of the root of title. Except as provided in s.
 170 712.03, all such estates, interests, claims, covenants,
 171 restrictions, or charges, however denominated, whether they are
 172 or appear to be held or asserted by a person sui juris or under
 173 a disability, whether such person is within or without the
 174 state, natural or corporate, or private or governmental, are
 175 declared to be null and void. However, this chapter does not

176 affect any right, title, or interest of the United States,
 177 Florida, or any of its officers, boards, commissions, or other
 178 agencies reserved in the patent or deed by which the United
 179 States, Florida, or any of its agencies parted with title.

180 (2) This section may not be construed to alter or
 181 invalidate a zoning ordinance, land development regulation,
 182 building code, or other ordinance, rule, regulation, or law if
 183 such ordinance, rule, regulation, or law operates independently
 184 of matters recorded in the official records.

185 (3) This section is intended to clarify existing law, is
 186 remedial in nature, and applies to all restrictions and
 187 covenants whether imposed or accepted before, on, or after
 188 October 1, 2017.

189 Section 7. Section 712.05, Florida Statutes, is amended to
 190 read:

191 712.05 Effect of filing notice.—

192 (1) A person claiming an interest in land or other right
 193 subject to extinguishment under this chapter ~~a homeowners'~~
 194 ~~association desiring to preserve a covenant or restriction~~ may
 195 preserve and protect such interest or right ~~the same~~ from
 196 extinguishment by the operation of this chapter ~~act~~ by filing
 197 for record, at any time during the 30-year period immediately
 198 following the effective date of the root of title, a written
 199 notice in accordance with s. 712.06 ~~this chapter~~.

200 (2) A property owners' association may preserve and

201 protect a community covenant or restriction from extinguishment
 202 by the operation of this chapter by filing for record, at any
 203 time during the 30-year period immediately following the
 204 effective date of the root of title:

205 (a) A written notice in accordance with s. 712.06; or

206 (b) A summary notice in substantial form and content as
 207 required under s. 720.3032(2). Failure of a summary notice to be
 208 indexed to the current owners of the affected property does not
 209 affect the validity of the notice or vitiate the effect of the
 210 filing of such notice.

211 (3) A ~~Such~~ notice under subsection (1) or subsection (2)
 212 preserves an interest in land or other ~~such claim of right~~
 213 subject to extinguishment under this chapter, or a ~~such~~ covenant
 214 or restriction or portion of such covenant or restriction, for
 215 not less than ~~up to~~ 30 years after filing the notice unless the
 216 notice is filed again as required in this chapter. A person's
 217 disability or lack of knowledge of any kind may not delay the
 218 commencement of or suspend the running of the 30-year period.
 219 Such notice may be filed for record by the claimant or by any
 220 other person acting on behalf of a claimant who is:

221 (a) Under a disability;

222 (b) Unable to assert a claim on his or her behalf; or

223 (c) One of a class, but whose identity cannot be
 224 established or is uncertain at the time of filing such notice of
 225 claim for record.

226
 227 ~~Such notice may be filed by a homeowners' association only if~~
 228 ~~the preservation of such covenant or restriction or portion of~~
 229 ~~such covenant or restriction is approved by at least two-thirds~~
 230 ~~of the members of the board of directors of an incorporated~~
 231 ~~homeowners' association at a meeting for which a notice, stating~~
 232 ~~the meeting's time and place and containing the statement of~~
 233 ~~marketable title action described in s. 712.06(1)(b), was mailed~~
 234 ~~or hand delivered to members of the homeowners' association at~~
 235 ~~least 7 days before such meeting. The property owners'~~
 236 ~~homeowners' association or clerk of the circuit court is not~~
 237 required to provide additional notice pursuant to s. 712.06(3).
 238 The preceding sentence is intended to clarify existing law.

239 ~~(4)(2)~~ It is ~~shall~~ not be necessary for the owner of the
 240 marketable record title, as described in s. 712.02 herein
 241 ~~defined~~, to file a notice to protect his or her marketable
 242 record title.

243 Section 8. Subsections (1) and (3) of section 712.06,
 244 Florida Statutes, are amended to read:

245 712.06 Contents of notice; recording and indexing.—

246 (1) To be effective, the notice referred to in s. 712.05,
 247 other than the summary notice referred to in s. 712.05(2)(b),
 248 must ~~shall~~ contain:

249 (a) The name or description and mailing address of the
 250 claimant or the property owners' ~~homeowners'~~ association

251 desiring to preserve any covenant or restriction ~~and the name~~
 252 ~~and particular post office address of the person filing the~~
 253 ~~claim or the homeowners' association.~~

254 (b) The name and mailing ~~post office~~ address of an owner,
 255 or the name and mailing ~~post office~~ address of the person in
 256 whose name the ~~said~~ property is assessed on the last completed
 257 tax assessment roll of the county at the time of filing, who,
 258 for purpose of such notice, shall be deemed to be an owner;
 259 ~~provided,~~ however, if a property owners' ~~homeowners'~~ association
 260 is filing the notice, ~~then~~ the requirements of this paragraph
 261 may be satisfied by attaching to and recording with the notice
 262 an affidavit executed by the appropriate member of the board of
 263 directors of the property owners' ~~homeowners'~~ association
 264 affirming that the board of directors of the property owners'
 265 ~~homeowners'~~ association caused a statement in substantially the
 266 following form to be mailed or hand delivered to the members of
 267 that property owners' ~~homeowners'~~ association:

268
 269 STATEMENT OF MARKETABLE TITLE ACTION
 270

271 The [name of property owners' ~~homeowners'~~ association] (the
 272 "Association") has taken action to ensure that the [name of
 273 declaration, covenant, or restriction], recorded in Official
 274 Records Book, Page, of the public records of
 275 County, Florida, as may be amended from time to time, currently

276 | burdening the property of each and every member of the
 277 | Association, retains its status ~~as the source of marketable~~
 278 | ~~title~~ with regard to the affected real property ~~the transfer of~~
 279 | ~~a member's residence~~. To this end, the Association shall cause
 280 | the notice required by chapter 712, Florida Statutes, to be
 281 | recorded in the public records of County, Florida. Copies
 282 | of this notice and its attachments are available through the
 283 | Association pursuant to the Association's governing documents
 284 | regarding official records of the Association.

285 |
 286 | (c) A full and complete description of all land affected
 287 | by such notice, which description shall be set forth in
 288 | particular terms and not by general reference, but if said claim
 289 | is founded upon a recorded instrument or a covenant or a
 290 | restriction, ~~then~~ the description in such notice may be the same
 291 | as that contained in such recorded instrument or covenant or
 292 | restriction, provided the same shall be sufficient to identify
 293 | the property.

294 | (d) A statement of the claim showing the nature,
 295 | description, and extent of such claim or other right subject to
 296 | extinguishment under this chapter or, in the case of a covenant
 297 | or restriction, a copy of the covenant or restriction, except
 298 | that it is ~~shall~~ not be necessary to show the amount of any
 299 | claim for money or the terms of payment.

300 | (e) If such claim or other right subject to extinguishment

301 under this chapter is based upon an instrument of record or a
 302 recorded covenant or restriction, such instrument of record or
 303 recorded covenant or restriction shall be deemed sufficiently
 304 described to identify the same if the notice includes a
 305 reference to the book and page in which the same is recorded.

306 (f) Such notice shall be acknowledged in the same manner
 307 as deeds are acknowledged for record.

308 (3) The person providing the notice referred to in s.
 309 712.05, other than a notice for preservation of a community
 310 covenant or restriction, shall:

311 (a) Cause the clerk of the circuit court to mail by
 312 registered or certified mail to the purported owner of said
 313 property, as stated in such notice, a copy thereof and shall
 314 enter on the original, before recording the same, a certificate
 315 showing such mailing. For preparing the certificate, the
 316 claimant shall pay to the clerk the service charge as prescribed
 317 in s. 28.24(8) and the necessary costs of mailing, in addition
 318 to the recording charges as prescribed in s. 28.24(12). If the
 319 notice names purported owners having more than one address, the
 320 person filing the same shall furnish a true copy for each of the
 321 several addresses stated, and the clerk shall send one such copy
 322 to the purported owners named at each respective address. Such
 323 certificate shall be sufficient if the same reads substantially
 324 as follows:

325

326 I hereby certify that I did on this, mail by
 327 registered (or certified) mail a copy of the foregoing notice to
 328 each of the following at the address stated:

329
 330 ...(Clerk of the circuit court)...
 331 of County, Florida,
 332 By...(Deputy clerk)...

333
 334 The clerk of the circuit court is not required to mail to the
 335 purported owner of such property any such notice that pertains
 336 solely to the preserving of any covenant or restriction or any
 337 portion of a covenant or restriction; or

338 (b) Publish once a week, for 2 consecutive weeks, the
 339 notice referred to in s. 712.05, with the official record book
 340 and page number in which such notice was recorded, in a
 341 newspaper as defined in chapter 50 in the county in which the
 342 property is located.

343 Section 9. Section 712.11, Florida Statutes, is amended to
 344 read:

345 712.11 Covenant revitalization.—A property owners'
 346 ~~homeowners'~~ association not otherwise subject to chapter 720 may
 347 use the procedures set forth in ss. 720.403-720.407 to revive
 348 covenants that have lapsed under the terms of this chapter.

349 Section 10. Section 712.12, Florida Statutes, is created
 350 to read:

351 712.12 Covenant or restriction revitalization by parcel
 352 owners not subject to a homeowners' association.—

353 (1) As used in this section, the term:

354 (a) "Community" means a group of parcels near one another
 355 sharing a common interest due to their proximity to one another
 356 and sharing a neighborhood name or identity, which parcels are
 357 or will be subject to covenants and restrictions which are
 358 recorded in the county where the property is located.

359 (b) "Covenant or restriction" means any agreement or
 360 limitation imposed by a private party and not required by a
 361 governmental agency as a condition of a development permit, as
 362 defined in s. 163.3164, which is contained in a document
 363 recorded in the public records of the county in which a parcel
 364 is located and which subjects the parcel to any use restriction
 365 that may be enforced by a parcel owner.

366 (c) "Parcel" means real property that is used for
 367 residential purposes and which is subject to exclusive ownership
 368 and any covenant or restriction that may be enforced by a parcel
 369 owner.

370 (d) "Parcel owner" means the record owner of legal title
 371 to a parcel.

372 (2) The parcel owners of a community not subject to a
 373 homeowners' association may use the procedures set forth in ss.
 374 720.403-720.407 to revive covenants or restrictions that have
 375 lapsed under the terms of this chapter, except:

376 (a) A reference to a homeowners' association or articles
377 of incorporation or bylaws of a homeowners' association under
378 ss. 720.403-720.407 is not required to revive the covenants or
379 restrictions.

380 (b) The approval required under s. 720.405(6) must be in
381 writing, and not at a meeting.

382 (c) The requirements under s. 720.407(2) may be satisfied
383 by having the organizing committee execute the revived covenants
384 or restrictions in the name of the community.

385 (d) The indexing requirements under s. 720.407(3) may be
386 satisfied by indexing the community name in the covenants or
387 restrictions as the grantee and the parcel owners as the
388 grantors.

389 (3) With respect to any parcel that has ceased to be
390 governed by covenants or restrictions as of October 1, 2017, the
391 parcel owner may commence an action by October 1, 2018, for a
392 judicial determination that the covenants or restrictions did
393 not govern that parcel as of October 1, 2017, and that any
394 revitalization of such covenants or restrictions as to that
395 parcel would unconstitutionally deprive the parcel owner of
396 rights or property.

397 (4) Revived covenants or restrictions that are implemented
398 pursuant to this section do not apply to or affect the rights of
399 the parcel owner which are recognized by any court order or
400 judgment in any action commenced by October 1, 2018, and any

401 such rights so recognized may not be subsequently altered by
 402 revived covenants or restrictions implemented under this section
 403 without the consent of the affected parcel owner.

404 Section 11. Paragraph (e) is added to subsection (2) of
 405 section 720.303, Florida Statutes, to read:

406 720.303 Association powers and duties; meetings of board;
 407 official records; budgets; financial reporting; association
 408 funds; recalls.—

409 (2) BOARD MEETINGS.—

410 (e) At the first board meeting, excluding the
 411 organizational meeting, which follows the annual meeting of the
 412 members, the board shall consider the desirability of filing
 413 notices to preserve the covenants or restrictions affecting the
 414 community or association from extinguishment under the
 415 Marketable Record Title Act, chapter 712, and to authorize and
 416 direct the appropriate officer to file notice in accordance with
 417 s. 720.3032.

418 Section 12. Section 720.3032, Florida Statutes, is created
 419 to read:

420 720.3032 Notice of association information; preservation
 421 from Marketable Record Title Act.—

422 (1) Not less than once every 5 years, each association
 423 shall record in the official records of each county in which the
 424 community is located a notice specifying:

425 (a) The legal name of the association.

426 (b) The mailing and physical addresses of the association.

427 (c) The names of the affected subdivision plats and
428 condominiums or, if not applicable, the common name of the
429 community.

430 (d) The name, address, and telephone number for the
431 current community association management company or community
432 association manager, if any.

433 (e) Indication as to whether the association desires to
434 preserve the covenants or restrictions affecting the community
435 or association from extinguishment under the Marketable Record
436 Title Act, chapter 712.

437 (f) A listing by name and recording information of those
438 covenants or restrictions affecting the community which the
439 association desires to be preserved from extinguishment.

440 (g) The legal description of the community affected by the
441 covenants or restrictions, which may be satisfied by a reference
442 to a recorded plat.

443 (h) The signature of a duly authorized officer of the
444 association, acknowledged in the same manner as deeds are
445 acknowledged for record.

446 (2) Recording a document in substantially the following
447 form satisfies the notice obligation and constitutes a summary
448 notice as specified in s. 712.05(2)(b) sufficient to preserve
449 and protect the referenced covenants and restrictions from
450 extinguishment under the Marketable Record Title Act, chapter

451 712.
 452
 453 Notice of ... (name of association) ... under s. 720.3032, Florida
 454 Statutes, and notice to preserve and protect covenants and
 455 restrictions from extinguishment under the Marketable Record
 456 Title Act, chapter 712, Florida Statutes.

457
 458 Instructions to recorder: Please index both the legal name
 459 of the association and the names shown in item 3.

460 1. Legal name of association:

461 2. Mailing and physical addresses of association:

462

463 3. Names of the subdivision plats, or, if none, common
 464 name of community:

465 4. Name, address, and telephone number for management
 466 company, if any:

467 5. This notice does does not constitute a notice
 468 to preserve and protect covenants or restrictions from
 469 extinguishment under the Marketable Record Title Act.

470 6. The following covenants or restrictions affecting the
 471 community which the association desires to be preserved from
 472 extinguishment:

473 ... (Name of instrument) ...

474 ... (Official Records Book where recorded & page) ...

475 ... (List of instruments) ...

476 ...(List of recording information)...

477 7. The legal description of the community affected by the
 478 listed covenants or restrictions is: ...(Legal description,
 479 which may be satisfied by reference to a recorded plat)...

480 This notice is filed on behalf of ...(Name of
 481 association) ... as of ...(Date)....

482 ...(Name of association)...

483
 484 By:

485 ...(Name of individual officer)...

486 ...(Title of officer)...

487 ...(Notary acknowledgment)...

488

489 (3) The failure to file one or more notices does not
 490 affect the validity or enforceability of any covenant or
 491 restriction nor in any way alter the remaining time before
 492 extinguishment by the Marketable Record Title Act, chapter 712.

493 (4) A copy of the notice, as filed, must be included as
 494 part of the next notice of meeting or other mailing sent to all
 495 members.

496 (5) The original signed notice must be recorded in the
 497 official records of the clerk of the circuit court or other
 498 recorder for the county.

499 Section 13. Section 702.09, Florida Statutes, is amended
 500 to read:

501 702.09 Definitions.—For the purposes of ss. 702.07 and
 502 702.08, the words "decree of foreclosure" shall include a
 503 judgment or order rendered or passed in the foreclosure
 504 proceedings in which the decree of foreclosure shall be
 505 rescinded, vacated, and set aside; the word "mortgage" shall
 506 mean any written instrument securing the payment of money or
 507 advances and includes liens to secure payment of assessments
 508 arising under chapters 718 and 719 and liens created pursuant to
 509 the recorded covenants of a property owners' ~~homeowners'~~
 510 association as defined in s. 712.01; the word "debt" shall
 511 include promissory notes, bonds, and all other written
 512 obligations given for the payment of money; the words
 513 "foreclosure proceedings" shall embrace every action in the
 514 circuit or county courts of this state wherein it is sought to
 515 foreclose a mortgage and sell the property covered by the same;
 516 and the word "property" shall mean and include both real and
 517 personal property.

518 Section 14. Subsection (1) of section 702.10, Florida
 519 Statutes, is amended to read:

520 702.10 Order to show cause; entry of final judgment of
 521 foreclosure; payment during foreclosure.—

522 (1) A lienholder may request an order to show cause for
 523 the entry of final judgment in a foreclosure action. For
 524 purposes of this section, the term "lienholder" includes the
 525 plaintiff and a defendant to the action who holds a lien

526 encumbering the property or a defendant who, by virtue of its
 527 status as a condominium association, cooperative association, or
 528 property owners' ~~homeowners'~~ association, may file a lien
 529 against the real property subject to foreclosure. Upon filing,
 530 the court shall immediately review the request and the court
 531 file in chambers and without a hearing. If, upon examination of
 532 the court file, the court finds that the complaint is verified,
 533 complies with s. 702.015, and alleges a cause of action to
 534 foreclose on real property, the court shall promptly issue an
 535 order directed to the other parties named in the action to show
 536 cause why a final judgment of foreclosure should not be entered.

537 (a) The order shall:

538 1. Set the date and time for a hearing to show cause. The
 539 date for the hearing may not occur sooner than the later of 20
 540 days after service of the order to show cause or 45 days after
 541 service of the initial complaint. When service is obtained by
 542 publication, the date for the hearing may not be set sooner than
 543 30 days after the first publication.

544 2. Direct the time within which service of the order to
 545 show cause and the complaint must be made upon the defendant.

546 3. State that the filing of defenses by a motion, a
 547 responsive pleading, an affidavit, or other papers before the
 548 hearing to show cause that raise a genuine issue of material
 549 fact which would preclude the entry of summary judgment or
 550 otherwise constitute a legal defense to foreclosure shall

551 constitute cause for the court not to enter final judgment.

552 4. State that a defendant has the right to file affidavits
553 or other papers before the time of the hearing to show cause and
554 may appear personally or by way of an attorney at the hearing.

555 5. State that, if a defendant files defenses by a motion,
556 a verified or sworn answer, affidavits, or other papers or
557 appears personally or by way of an attorney at the time of the
558 hearing, the hearing time will be used to hear and consider
559 whether the defendant's motion, answer, affidavits, other
560 papers, and other evidence and argument as may be presented by
561 the defendant or the defendant's attorney raise a genuine issue
562 of material fact which would preclude the entry of summary
563 judgment or otherwise constitute a legal defense to foreclosure.
564 The order shall also state that the court may enter an order of
565 final judgment of foreclosure at the hearing and order the clerk
566 of the court to conduct a foreclosure sale.

567 6. State that, if a defendant fails to appear at the
568 hearing to show cause or fails to file defenses by a motion or
569 by a verified or sworn answer or files an answer not contesting
570 the foreclosure, such defendant may be considered to have waived
571 the right to a hearing, and in such case, the court may enter a
572 default against such defendant and, if appropriate, a final
573 judgment of foreclosure ordering the clerk of the court to
574 conduct a foreclosure sale.

575 7. State that if the mortgage provides for reasonable

576 attorney fees and the requested attorney fees do not exceed 3
 577 percent of the principal amount owed at the time of filing the
 578 complaint, it is unnecessary for the court to hold a hearing or
 579 adjudge the requested attorney fees to be reasonable.

580 8. Attach the form of the proposed final judgment of
 581 foreclosure which the movant requests the court to enter at the
 582 hearing on the order to show cause.

583 9. Require the party seeking final judgment to serve a
 584 copy of the order to show cause on the other parties in the
 585 following manner:

586 a. If a party has been served pursuant to chapter 48 with
 587 the complaint and original process, or the other party is the
 588 plaintiff in the action, service of the order to show cause on
 589 that party may be made in the manner provided in the Florida
 590 Rules of Civil Procedure.

591 b. If a defendant has not been served pursuant to chapter
 592 48 with the complaint and original process, the order to show
 593 cause, together with the summons and a copy of the complaint,
 594 shall be served on the party in the same manner as provided by
 595 law for original process.

596
 597 Any final judgment of foreclosure entered under this subsection
 598 is for in rem relief only. This subsection does not preclude the
 599 entry of a deficiency judgment where otherwise allowed by law.
 600 The Legislature intends that this alternative procedure may run

601 | simultaneously with other court procedures.

602 | (b) The right to be heard at the hearing to show cause is
603 | waived if a defendant, after being served as provided by law
604 | with an order to show cause, engages in conduct that clearly
605 | shows that the defendant has relinquished the right to be heard
606 | on that order. The defendant's failure to file defenses by a
607 | motion or by a sworn or verified answer, affidavits, or other
608 | papers or to appear personally or by way of an attorney at the
609 | hearing duly scheduled on the order to show cause presumptively
610 | constitutes conduct that clearly shows that the defendant has
611 | relinquished the right to be heard. If a defendant files
612 | defenses by a motion, a verified answer, affidavits, or other
613 | papers or presents evidence at or before the hearing which raise
614 | a genuine issue of material fact which would preclude entry of
615 | summary judgment or otherwise constitute a legal defense to
616 | foreclosure, such action constitutes cause and precludes the
617 | entry of a final judgment at the hearing to show cause.

618 | (c) In a mortgage foreclosure proceeding, when a final
619 | judgment of foreclosure has been entered against the mortgagor
620 | and the note or mortgage provides for the award of reasonable
621 | attorney fees, it is unnecessary for the court to hold a hearing
622 | or adjudge the requested attorney fees to be reasonable if the
623 | fees do not exceed 3 percent of the principal amount owed on the
624 | note or mortgage at the time of filing, even if the note or
625 | mortgage does not specify the percentage of the original amount

626 that would be paid as liquidated damages.

627 (d) If the court finds that all defendants have waived the
628 right to be heard as provided in paragraph (b), the court shall
629 promptly enter a final judgment of foreclosure without the need
630 for further hearing if the plaintiff has shown entitlement to a
631 final judgment and upon the filing with the court of the
632 original note, satisfaction of the conditions for establishment
633 of a lost note, or upon a showing to the court that the
634 obligation to be foreclosed is not evidenced by a promissory
635 note or other negotiable instrument. If the court finds that a
636 defendant has not waived the right to be heard on the order to
637 show cause, the court shall determine whether there is cause not
638 to enter a final judgment of foreclosure. If the court finds
639 that the defendant has not shown cause, the court shall promptly
640 enter a judgment of foreclosure. If the time allotted for the
641 hearing is insufficient, the court may announce at the hearing a
642 date and time for the continued hearing. Only the parties who
643 appear, individually or through an attorney, at the initial
644 hearing must be notified of the date and time of the continued
645 hearing.

646 Section 15. Section 712.095, Florida Statutes, is amended
647 to read:

648 712.095 Notice required by July 1, 1983.—Any person whose
649 interest in land is derived from an instrument or court
650 proceeding recorded subsequent to the root of title, which

651 instrument or proceeding did not contain a description of the
 652 land as specified by s. 712.01(7) ~~s. 712.01(3)~~, and whose
 653 interest had not been extinguished prior to July 1, 1981, shall
 654 have until July 1, 1983, to file a notice in accordance with s.
 655 712.06 to preserve the interest.

656 Section 16. Section 720.403, Florida Statutes, is amended
 657 to read:

658 720.403 Preservation of ~~residential~~ communities; revival
 659 of declaration of covenants.—

660 (1) Consistent with required and optional elements of
 661 local comprehensive plans and other applicable provisions of the
 662 Community Planning Act, property owners ~~homeowners~~ are
 663 encouraged to preserve existing residential and other
 664 communities, promote available and affordable housing, protect
 665 structural and aesthetic elements of their ~~residential~~
 666 community, and, as applicable, maintain roads and streets,
 667 easements, water and sewer systems, utilities, drainage
 668 improvements, conservation and open areas, recreational
 669 amenities, and other infrastructure and common areas that serve
 670 and support the ~~residential~~ community by the revival of a
 671 previous declaration of covenants and other governing documents
 672 that may have ceased to govern some or all parcels in the
 673 community.

674 (2) In order to preserve a ~~residential~~ community and the
 675 associated infrastructure and common areas for the purposes

676 described in this section, the parcel owners in a community that
 677 was previously subject to a declaration of covenants that has
 678 ceased to govern one or more parcels in the community may revive
 679 the declaration and the ~~homeowners'~~ association for the
 680 community upon approval by the parcel owners to be governed
 681 thereby as provided in this act, and upon approval of the
 682 declaration and the other governing documents for the
 683 association by the Department of Economic Opportunity in a
 684 manner consistent with this act.

685 (3) Part III of this chapter is intended to provide
 686 mechanisms for the revitalization of covenants or restrictions
 687 for all types of communities and property associations and is
 688 not limited to residential communities.

689 Section 17. Section 720.404, Florida Statutes, is amended
 690 to read:

691 720.404 Eligible ~~residential~~ communities; requirements for
 692 revival of declaration.—Parcel owners in a community are
 693 eligible to seek approval from the Department of Economic
 694 Opportunity to revive a declaration of covenants under this act
 695 if all of the following requirements are met:

696 (1) All parcels to be governed by the revived declaration
 697 must have been once governed by a previous declaration that has
 698 ceased to govern some or all of the parcels in the community;

699 (2) The revived declaration must be approved in the manner
 700 provided in s. 720.405(6); and

701 (3) The revived declaration may not contain covenants that
 702 are more restrictive on the parcel owners than the covenants
 703 contained in the previous declaration, except that the
 704 declaration may:

705 (a) Have an effective term of longer duration than the
 706 term of the previous declaration;

707 (b) Omit restrictions contained in the previous
 708 declaration;

709 (c) Govern fewer than all of the parcels governed by the
 710 previous declaration;

711 (d) Provide for amendments to the declaration and other
 712 governing documents; and

713 (e) Contain provisions required by this chapter for new
 714 declarations that were not contained in the previous
 715 declaration.

716 Section 18. Subsections (1), (3), (5), and (6) of section
 717 720.405, Florida Statutes, are amended to read:

718 720.405 Organizing committee; parcel owner approval.—

719 (1) The proposal to revive a declaration of covenants and
 720 an a-homeowners' association for a community under the terms of
 721 this act shall be initiated by an organizing committee
 722 consisting of not less than three parcel owners located in the
 723 community that is proposed to be governed by the revived
 724 declaration. The name, address, and telephone number of each
 725 member of the organizing committee must be included in any

726 notice or other document provided by the committee to parcel
 727 owners to be affected by the proposed revived declaration.

728 (3) The organizing committee shall prepare the full text
 729 of the proposed articles of incorporation and bylaws of the
 730 revived ~~homeowners'~~ association to be submitted to the parcel
 731 owners for approval, unless the association is then an existing
 732 corporation, in which case the organizing committee shall
 733 prepare the existing articles of incorporation and bylaws to be
 734 submitted to the parcel owners.

735 (5) A copy of the complete text of the proposed revised
 736 declaration of covenants, the proposed new or existing articles
 737 of incorporation and bylaws of the ~~homeowners'~~ association, and
 738 a graphic depiction of the property to be governed by the
 739 revived declaration shall be presented to all of the affected
 740 parcel owners by mail or hand delivery not less than 14 days
 741 before the time that the consent of the affected parcel owners
 742 to the proposed governing documents is sought by the organizing
 743 committee.

744 (6) A majority of the affected parcel owners must agree in
 745 writing to the revived declaration of covenants and governing
 746 documents of the ~~homeowners'~~ association or approve the revived
 747 declaration and governing documents by a vote at a meeting of
 748 the affected parcel owners noticed and conducted in the manner
 749 prescribed by s. 720.306. Proof of notice of the meeting to all
 750 affected owners of the meeting and the minutes of the meeting

751 recording the votes of the property owners shall be certified by
752 a court reporter or an attorney licensed to practice in the
753 state.

754 Section 19. Subsection (3) of section 720.407, Florida
755 Statutes, is amended to read:

756 720.407 Recording; notice of recording; applicability and
757 effective date.—

758 (3) The recorded documents shall include the full text of
759 the approved declaration of covenants, the articles of
760 incorporation and bylaws of the ~~homeowners'~~ association, the
761 letter of approval by the department, and the legal description
762 of each affected parcel of property. For purposes of chapter
763 712, the association is deemed to be and shall be indexed as the
764 grantee in a title transaction and the parcel owners named in
765 the revived declaration are deemed to be and shall be indexed as
766 the grantors in the title transaction.

767 Section 20. This act shall take effect July 1, 2017.